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September 28, 2007

VIA ELECTRONIC FILING

The Honorable Gregory M. Sleet
United States District Court
Federal Building
844 North King Street
Wilmington, DE 19801

Re: *Merck & Co., Inc. v. Ranbaxy Inc. and Ranbaxy Laboratories Limited*
C.A. No. 07-229

Dear Chief Judge Sleet:

Enclosed is the agreed-upon form of scheduling order reflecting the dates and provisions discussed at the Rule 16 Scheduling Conference.

Respectfully,

/s/ Mary B. Graham

Mary B. Graham (#2256)

MBG/dam
Enclosure

cc: Clerk of the Court (via hand delivery)
Frederick L. Cottrell, Esquire (via email and hand delivery)
Mark Boland, Esquire (via email)
Raymond N. Nimrod, Esquire (via email)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MERCK & CO., INC.,)	
)	
Plaintiff and Counterclaim Defendant,)	
)	
v.)	C.A. No. 07-229 (GMS)
)	
RANBAXY INC., and RANBAXY)	
LABORATORIES LIMITED,)	
)	
Defendants and Counterclaim Plaintiffs.)	
_____)	

SCHEDULING ORDER [PATENT]

This ____ day of _____, 200__, the Court having conducted a Rule 16 Scheduling Conference pursuant to Local Rule 16.2(b) on September 19, 2007, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before October 17, 2007.
2. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before January 4, 2008.
3. **Reliance Upon Advice of Counsel.** Defendant shall inform plaintiff whether it intends to rely upon advice of counsel as a defense to willful infringement or attorneys' fees no later than April 18, 2008. If defendant elects to rely upon advice of counsel as a defense to willful infringement or attorneys' fees, defendant shall produce to plaintiff any such opinions on which defendant intends to rely and related documents no later than April 18, 2008.

4. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on February 7, 2007 at 9:30 a.m. The *Markman* hearing is scheduled for a half day, with the time split equally between the Merck and Ranbaxy. On or before November 16, 2007, the parties shall exchange (a) lists of claim terms they believe are in dispute, together with their proposed constructions of those terms and all intrinsic support for such constructions, and (b) designations of items to be included in the joint appendix containing relevant prosecution history. The parties shall meet and confer regarding narrowing and reducing the number of claim construction issues by November 26, 2007. On or before November 28, 2007, the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence. The plaintiff shall submit to the Court a Joint Appendix of Intrinsic and Extrinsic Evidence (the "Joint Appendix") containing all intrinsic and extrinsic evidence relied upon in the claim construction briefing. A sample table of contents of the Joint Appendix can be located on this Court's website at www.ded.uscourts.gov. The Joint Appendix shall be filed on the same day as the answering claim construction briefs. The parties shall file opening claim construction briefs on December 7, 2007, and answering claim construction briefs on December 21, 2007.

5. **Discovery.** All fact discovery in this case shall be initiated so that it will be completed on or before May 30, 2008. Expert Discovery in this case shall be initiated so that it will be completed on or before May 30, 2008. The parties will exchange opening expert reports on issues on which they bear the burden of proof on March 28, 2008. The parties will exchange rebuttal expert reports on April 25, 2008.

a. **Discovery and Scheduling Matters:** Should counsel find they are unable to resolve a discovery or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the

teleconference, the parties shall file with the Court, via electronic means (CM/ECF), a **joint, non-argumentative** letter agenda not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this court's website at www.ded.uscourts.gov. After the parties have had three (3) discovery teleconferences, they will be required to file a joint letter showing good cause why the Court should permit a fourth discovery teleconference. Should the Court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

6. **Confidential Information and Papers filed under Seal.** Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the court within ten (10) days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).

7. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to the United States Magistrate for the purpose of exploring the possibility of a settlement. If the parties agree that the possibility of settlement may be enhanced by such referral, the parties shall

contact the United States Magistrate Judge to schedule a settlement conference with counsel and the clients.

8. **Summary Judgment And Case Dispositive Motions.** No summary judgment or case dispositive motions shall be filed in the case except under the circumstance and by the procedure discussed at the Rule 16 scheduling conference (transcript p. 13).

9. **Applications by Motion.** Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

10. **Daubert Issues.** The Court will address Daubert issues at the Pretrial Conference.

11. **Pretrial Conference.** On September 4, 2008 beginning at 2:00 p.m., the Court will hold a Pretrial Conference in Chambers with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). A sample form of Pretrial Order can be located on this court's website at www.ded.uscourts.gov. Thirty (30) days before the Joint Proposed Pretrial Order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft as well as the information defendant proposes to include in the proposed pretrial order. **Motions in limine:** No party shall file more than five (5) motions *in limine*. Briefs (**opening, answering and reply**) on all motions *in limine* shall be filed by July 28, August 4, and August 11, 2008. Opening and answering briefs shall not exceed five (5) pages and reply briefs shall not exceed three (3) pages.

The parties shall file with the court the **joint** proposed final pretrial order with the information required by the form of Final Pretrial Order which can be located on this court's website at www.ded.uscourts.gov on or before August 11, 2007.

12. **Trial.** This matter is scheduled for a 5-day bench trial beginning at 9:00 a.m. on September 15, 2008.

13. **Scheduling.** The parties shall contact chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel is on the line for purposes of selecting a new date.

UNITED STATES DISTRICT JUDGE

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